



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu

CUSTOMER ASSISTANCE

WILLIAM TAYLOR,)	ORDER ON PETITIONER'S
PETITIONER,)	MOTION TO SETTLE THE RECORD
v.)	
)	BPU DOCKET NO. EC06020077U JERSEY
CENTRAL POWER & LIGHT COMPANY,)	OAL DOCKET NO. PUC 6811-07S
RESPONDENT.)	APP. DIV. DOCKET NO. A004028-08T2

APPEARANCES:

William Taylor pro se, Petitioner

Michael J. Connolly (Morgan, Lewis & Bockius LLP, attorneys) for the Respondent, Jersey Central Power & Light Company

Kerri Kirschbaum Deputy Attorney General, for the New Jersey Board of Public Utilities (**Anne Milgram, Esq.**, Attorney General of New Jersey)

BY THE BOARD:

BACKGROUND

This matter has been opened to the Board of Public Utilities ("Board") by the filing of a Motion to Settle the Record on appeal ("Motion") under the New Jersey Court Rules, R. 2:5-5(a) by William Taylor ("Petitioner"). The Motion ultimately stems from the Board's Final Decision which adopted the Initial Decision of Administrative Law Judge ("ALJ") Douglas H. Hurd. ALJ Hurd's Initial Decision dismissed Petitioner's petition against Jersey Central Power & Light Company ("Respondent") and ordered Petitioner to pay Respondent all amounts currently past due and owing for electric services. Because the Board's February 11, 2009 Order denying Petitioner's Motion for Reconsideration discussed the procedural history of this matter in great detail, it will not be repeated at length here. The Board does note, however, that on April 23, 2009 Petitioner filed an appeal of the Board's Order with the Superior Court of New Jersey, Appellate Division ("Appellate Division").

On April 13, 2009, Petitioner filed a Motion for Stay Pending Appeal, which the Board denied at its April 27, 2009 agenda meeting.

On June 23, 2009, the Board filed a statement of the items comprising the record on appeal ("SOI") with the Appellate Division in Docket No. A-004028-08T2. Thereafter, the Petitioner made several requests with the Board's counsel that certain documents be added to the SOI. With consent of Respondent, on September 10, 2009, the Board submitted an amended SOI including seven of the ten documents Petitioner argued should be part of the SOI.

On September 14, 2009, the Petitioner filed a Motion to Settle the Record ("Motion") with the Board and Respondent filed its Response on September 25, 2009. On October 1, 2009, Petitioner filed a Reply to Respondent's Response.

Petitioner's Motion to Settle the Record

Petitioner's Motion states that the SOI "does not fully and truly subsume substantive communication with the Board as to the history and facts of Petitioner's case which dates back to 1998, Petitioner's first contact with the Board in 1999 and subsequent communications with the Board delineating the nature of the unresolved problems from their inception." (Petitioner's Motion at 2). Petitioner also asserts that there are "some" documents that are not in the SOI but that are referred to in other documents that are in the SOI. Petitioner requests, because of the foregoing, that the following three letters be added to the SOI: 1) November 15, 2002 letter from Petitioner to the Board discussing complaints, 2) March 10, 2003 letter from Board Staff to Respondent enclosing Petitioner's November 15, 2002, and 3) March 25, 2003 letter from Respondent to Board Staff detailing the results of its investigation into Petitioner's complaints contained in his November 15, 2002 letter (collectively "Requested Documents").

Respondent's Response

In its Response, Respondent maintains that Petitioner has failed to provide any substantive support for the inclusion of the Requested Documents in the SOI.

Respondent argues that Petitioner fails to demonstrate that the Requested Documents, which predate the establishment of a formal docket in this matter, were actually filed with, and considered by the Board, in making its determination. Respondent argues that Petitioner's Motion must show that a correction to the record is required due to an oversight or mistake by the Board in failing to include some document that was in fact a part of the record upon which the Board's decision in the docketed proceeding was made. Respondent concludes that Petitioner has failed in carrying this burden, as Petitioner "merely asserts the Requested Letters are necessary to understand other pieces of evidence that are part of the record." (Respondent's Response at 9). According to Respondent, these mere assertions do not warrant a correction to the SOI which properly reflects that the Requested Documents were not part of the record and were not considered in this proceeding. Citing Comment 2 to R. 2:5-4, Respondent argues that absent a clear and compelling finding of mistake, the SOI, as it is presently constituted, provides the appropriate information to facilitate "the appellate court's understanding of what proofs, exhibits, stipulations and the like the agency considered in reaching its determination." (Respondent's Response at 10).

Secondly, Respondent argues that Petitioner fails to understand the distinction between the Board's formal and informal proceedings and the rules applicable to each. Respondent disagrees with the Petitioner's assumption that, because the Requested Documents were part of the Board's "historic informal complaint file," such documents must therefore be part of the Board's record with regard to its decision-making in the formal complaint proceeding. Citing N.J.A.C. 14:1-5.13, which establishes the guidelines for filing an informal complaint in lieu of a

petition, Respondent maintains that the informal complaint process is distinct and separate process from filing a formal petition. Unlike an informal complaint, a formal complaint and its subsequent proceedings require compliance with the applicable rules of procedure, including the conduct of evidentiary hearings. To argue otherwise, Respondent suggests, would be contrary to the intent of the Board's informal complaint regulations.

Similarly, Respondent argues that the Petitioner did not move the Requested Documents he now seeks to have added to the SOI into evidence during the adjudicatory proceeding held with respect to his formal petition. Unless the Board itself takes such items into consideration on its own motion, Respondent argues that documents filed as an informal complaint cannot be a part of the record in a formal petition unless made part of the record during the adjudication of the formal petition. Respondent further stresses that Petitioner has not pointed to one instance in which he "proffered the Requested [Documents] into evidence in the context of the docketed litigation of his December 2005 Petition." (Respondent's Response at 13). According to Respondent, Petitioner cannot point to any instance of oversight or mistake by the Board that may have precluded the Requested Documents from admission throughout the pendency of this matter. Respondent concludes that there is no basis for the Board to find grant Petitioner's Motion.

Petitioner's Reply

On October 1, 2009, Petitioner filed a Reply to Respondent's Response, wherein he argues that the March 25, 2003 letter should be included in the SOI because it was an attachment included in Exhibit R-4 (Respondent's Answer) to the OAL hearing of April 11, 2008. Petitioner further urges that the November 15, 2002 complaint puts the March 25, 2003 letter in context, and allows it to be better understood. Along the same line, according to Petitioner, the March 10, 2003 Letter places the November 15, 2002 letter in necessary context. Petitioner also argues that each of the letters were received and distributed to Respondent and the Board. Petitioner includes several examples of exhibits to the April 11, 2008 hearing that refer to the Requested Documents. Petitioner concludes that he has established that this matter is an ongoing complaint dating back to 1998, and that to exclude the Requested Documents would be fundamentally unfair.

Petitioner further disputes what he believes was Respondent's interpretation of R. 2:5-4(a) as being defined by Comment 2. He argues that, rather than defining R. 2:5-4(a), Comment 2 merely provides explanation of why the SOI is required to facilitate the appellate court's understanding of how the agency reached its determination. Petitioner, therefore, argues that the SOI should include not only what the Board considered, but what it failed to consider as well, so that the Appellate Court can determine if the Board failed to consider a document that is critical to Petitioner's claim.

Petitioner also disputes Respondent's distinction of formal versus informal matters at the Board. Here, Petitioner objects to what he considers Respondent's incorrect interpretation of Gross v. Borough of Neptune, 378 N.J. Super. 155 (2005). Petitioner states emphatically that this case was incorrectly cited by Respondent as an example of "where litigants brought non-record evidence into the appellate proceedings without having either moved to correct or supplement the record." Reply at 4. Petitioner concludes, therefore, that the Requested Documents should be included in the SOI.

The Board also notes that, by letter dated October 5, 2009, Respondent withdrew its objection to the inclusion of the March 25, 2003 letter. Thereafter, by letter dated October 6, 2009,

Petitioner acknowledged Respondent's withdrawal but argued that Respondent's withdrawal of objection to the inclusion of one of the letters, but not all of them, is contrary to its position in its Response because the remaining two letters in dispute put the March 25, 2003 letter in context.

In a letter dated October 7, 2009, Respondent noted that there is no provision in the Board's procedures that allow for what it deems Petitioner's "on-going and additive arguments..." Therefore, Respondent requests that the Petitioner's October 6, 2009 letter be disregarded.

DISCUSSION

Initially, the Board notes and accepts Respondent's withdrawal of its objection to the March 25, 2003 letter. This letter was attached to Respondent's Answer, which is part of the SOI and was also introduced at the April 11, 2007 hearing as Exhibit R-4. Because the March 25, 2003 letter was already included as an attachment to a document that was in the record, the Board will again amend the SOI to include this letter as a separate item in the SOI. The Board does so as a courtesy, despite the fact that it appears unnecessary since the document is already part of the record by virtue of its inclusion in Respondent's Answer.

The Board notes that the requirements for the SOI are governed by the New Jersey Court Rules. Specifically, R. 2:5-4(a) describes what should be included in the SOI, and in relevant part states that "[t]he record on appeal shall consist of all papers on file in the ...agencies below, with all entries as to matters made on the records of such...agencies." A party "who questions whether the record fully and truly discloses what occurred in the court or agency below shall...apply on motion to settle the record." R. 2:5-5(a). If evidence material to the issues on appeal from an agency decision was "unadduced in the proceeding below," a party may move to supplement the record. R. 2:5-5(b).

The purpose of the SOI is to provide the reviewing court with a record that fully and truly discloses what occurred before the agency, and properly accounts for the evidence that was considered in reaching the decision on appeal. The rule is meant to give notice to the parties that a reviewing court will not consider evidentiary material that was not part of the record. Mount Olive Complex v. Township of Mount Olive, 340 N.J. Super. 511, 527 (2001).

It is of particular importance to note that this matter stems from the filing of a December 21, 2005 petition, pursuant to N.J.A.C. 14:1-5.1, by Petitioner. That petition was precipitated by Petitioner's informal complaint filed with the Board on March 9, 2005 pursuant to N.J.A.C. 1:1-5.13.

The Board's informal complaint process is distinct from the filing of a formal petition, as is stated in N.J.A.C. 14:1-5.13. Specifically, the provision provides for the filing of an informal complaint "In lieu of filing a petition..." (N.J.A.C. 14:1-5.13(a)). Further, the procedural requirements, including form and content of petitions and the requirements of an evidentiary hearing and discovery process, do not apply to informal complaints. For these reasons, among others, the Board treats informal complaints as separate and distinct from formal petitions.

Thus, documents that were filed with the Board as part of an informal complaint should not, as a matter of course, be considered part of the record on appeal, unless the parties introduced or filed them with the Board during the pendency of the matter being appealed. In this case, however, the documents that were filed beginning on March 9, 2005 pursuant to N.J.A.C. 14:1-5.13 resulted in the Board's Staff notifying Petitioner that they were unable to informally resolve his complaint with Respondent and informing him that he may file a formal petition with the

Board. The documents associated with the informal complaint were actually received and considered by the Board in the matter being appealed, and thus, the Board determined to allow them to be added to the SOI.

On the other hand, the November 15, 2002 and March 10, 2003 letters are part of an entirely different informal filing made by Petitioner almost three years before Petitioner filed the informal complaint that led to the petition in this matter. Additionally, it appears from the informal case number that these documents were received and handled by the Board's Energy Division, and not the Board's Customer Assistance Division.


Nonetheless, despite the fact that the Board did not have each of these letters when considering this matter, in the interest of being complete, the Board will amend the SOI to include them. The Board notes that its determination is based on the specific facts of this case, and that ordinarily such documents would not be included as part of the SOI.

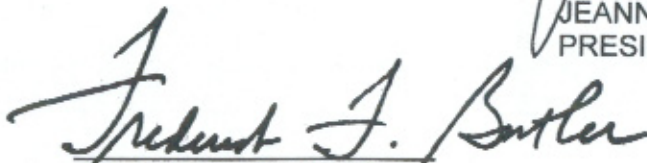
The Board has now considered the November 15, 2002 and the March 10, 2003 letter, and finds that, while perhaps relevant, the letters are inconsequential in the greater context of this matter. Throughout this matter, the Board has been acutely aware of the length and complexity of Petitioner's complaint.

Therefore, the Board HEREBY ORDERS that the SOI be amended to include the November 15, 2002 letter, the March 10, 2003 letter, and the March 25, 2003 letter.

DATED: 10/30/09

BOARD OF PUBLIC UTILITIES
BY:



JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER

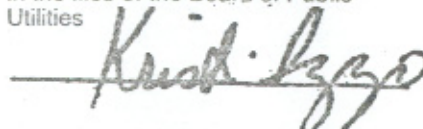

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COMMISSIONER


NICHOLAS ASSELTA
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COMMISSIONER

ATTEST: 
KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



WILLIAM TAYLOR

v.

JERSEY CENTRAL POWER & LIGHT COMPANY

BPU Docket No. EC06020077U

OAL Docket No. PUC 06811-07S

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